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| 10/583,314 | 06/15/2006 | Kenji Noumi | ABE-036 | 3229 |
| 20374 | 7590 | 05/30/2007 | | |
| KUBOVCIK & KUBOVCIK SUITE 710 900 17TH STREET NW WASHINGTON, DC 20006 | | | EXAMINER SIPOS, JOHN | |
| | | | ART UNIT 3721 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/583,314

Applicant(s)

NOUMI, KENJI

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>6/15/06</u> . | 6) <input type="checkbox"/> Other: ____. |

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite in that it is unclear what is being claimed. The extent of the "packaging machine" is not clear from claim 1 since the structure of the packaging machine is not recited (note that only the method steps are set forth) nor does the description of the packaging machine/operation is limited to specific structures, i.e. other mechanisms/operations besides those recited in the claim could be part of the packaging machine.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claim 1 is rejected under 35 U.S.C. ' 102(b) as being anticipated by the patent to Mikata (4,813,205). The patent to Mikata shows a vertical form-fill-seal (VFFS) machine that comprises a weighing mechanism 50 and a discharge mechanism 60 and a defective item removing means 62 that removes packages that do not meet required weight requirements. Since the weighing mechanism is just below the VFFS packaging unit it is considered as being part of the packaging machine.

Claim 4 is rejected under 35 U.S.C. ' 102(b) as being anticipated by the patent to Blodget (4,164,260). The patent to Blodget shows a weighing operation that comprises a conveying passage, a weighing means along the passage, the weighing means comprises of a bucket 5 that holds and surrounds the item to be weighed and a weighing load cell 6 that weighs the products as they move through the bucket.

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Mikata (4,813,205) in view of Blodget (4,164,260). It would have been obvious to one skilled in the art to substitute a weighing mechanism such as shown by Blodget for the weighing mechanism of Mikata so that the article is held within a bucket rather than being exposed to damage or falling off the weighing conveyor.

Regarding claims 3 and 5, note that Mikata discloses in column 4, line 66 et seq that removing means other than compresses air can be used, such as flippers or deflecting conveyors. One such example is shown in Figure 2 which comprises a chute 43,44, a defective package removing means 46 and a lid 43 pivotable in a vertical plane to deflect the defective packages into bin 48. It would have been obvious to one skilled in the art to use a defective item removing means in the Figure 4 embodiment of Mikata as shown in the Figure 2 embodiment. The use of counters to keep track of the number of packages produced in a packaging machine is well known and the Examiner takes official notice that their use is common knowledge in the packaging art. It would have been obvious to one skilled in the art to provide Mikata with a counter to keep track of the number of packages produced.

Claims 6 and 7 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Mikata (4,813,205) in view of Blodget (4,164,260), as applied to the claims above, and further in view of the patent to Brook (2,847,807). The Mikata reference lacks the use of a discharge guide below the deflecting lid. The patent to Brook shows a packaging machine that comprises within the packaging machine a sensor 26 that senses a defective package and actuates a defective item removing lid 36 upstream of the discharge chute 22 to guide 37. It would have been obvious to one skilled in the art to provide the defective item removing means of Mikata with a guide such as shown by Brook to further guide the packages out of the machine.

Regarding claim 7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide defective item removing lid with adjusting means, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art.

ADDITIONAL REFERENCES CITED

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The patents to, Kammler Rimondi, Nagao, Edmonson, Garris, Henning as well as the Japanes reference show defective package sensing mechanisms and defective package removing means upstream from the discharge chute of packaging machines with the first four references showing weighing mechanism to sense defective packages.

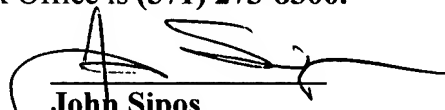
The patents to Feurstein and De Cadenos show defective item trap doors.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

The **FAX** number for U.S. Patent and Trademark Office is **(571) 273-8300**.



John Sipos
Primary Examiner
Art Unit 3721